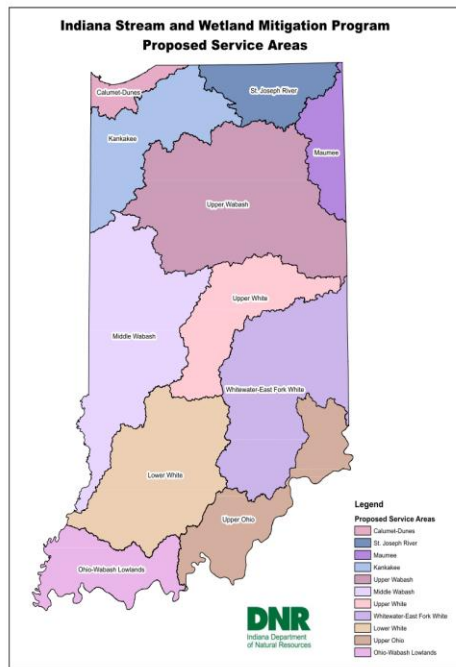


# Indiana Stream & Wetland Mitigation Program: Indiana's In-Lieu Fee Program



Carl Wodrich  
Director of Ecological Services  
Indiana Department of Natural Resources

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Manager of Conservation Services – Mitigation  
Ducks Unlimited, Inc.

# Public Information Sessions

- **Objectives:**

- Different types of permits involved
- Compensatory Mitigation & Process
- What is an in-lieu fee (ILF) program and why does Indiana need one?
- How is the ILF program being set up?
- How the in-lieu fee program will work.

August 5<sup>th</sup>

- Spring Mill State Park, Mitchell, IN

August 6<sup>th</sup>

- Ft. Harrison SP Inn, Indianapolis, IN

August 7<sup>th</sup>

- Potato Creek SP, North Liberty, IN

# Permits Proposed for the Program

- **Army Corps of Engineers** – regulations under:
  - Section 10 Harbors Act
  - Section 404 of Clean Water Act (CWA)
- **Indiana Dept of Environmental Management** – regulations under:
  - Section 401 Water Quality Certifications (CWA)
  - Indiana Isolated Wetlands Law
- **Indiana DNR Division of Water:**
  - For construction in a floodway, public freshwater lake or navigable waterway

# Compensatory Mitigation

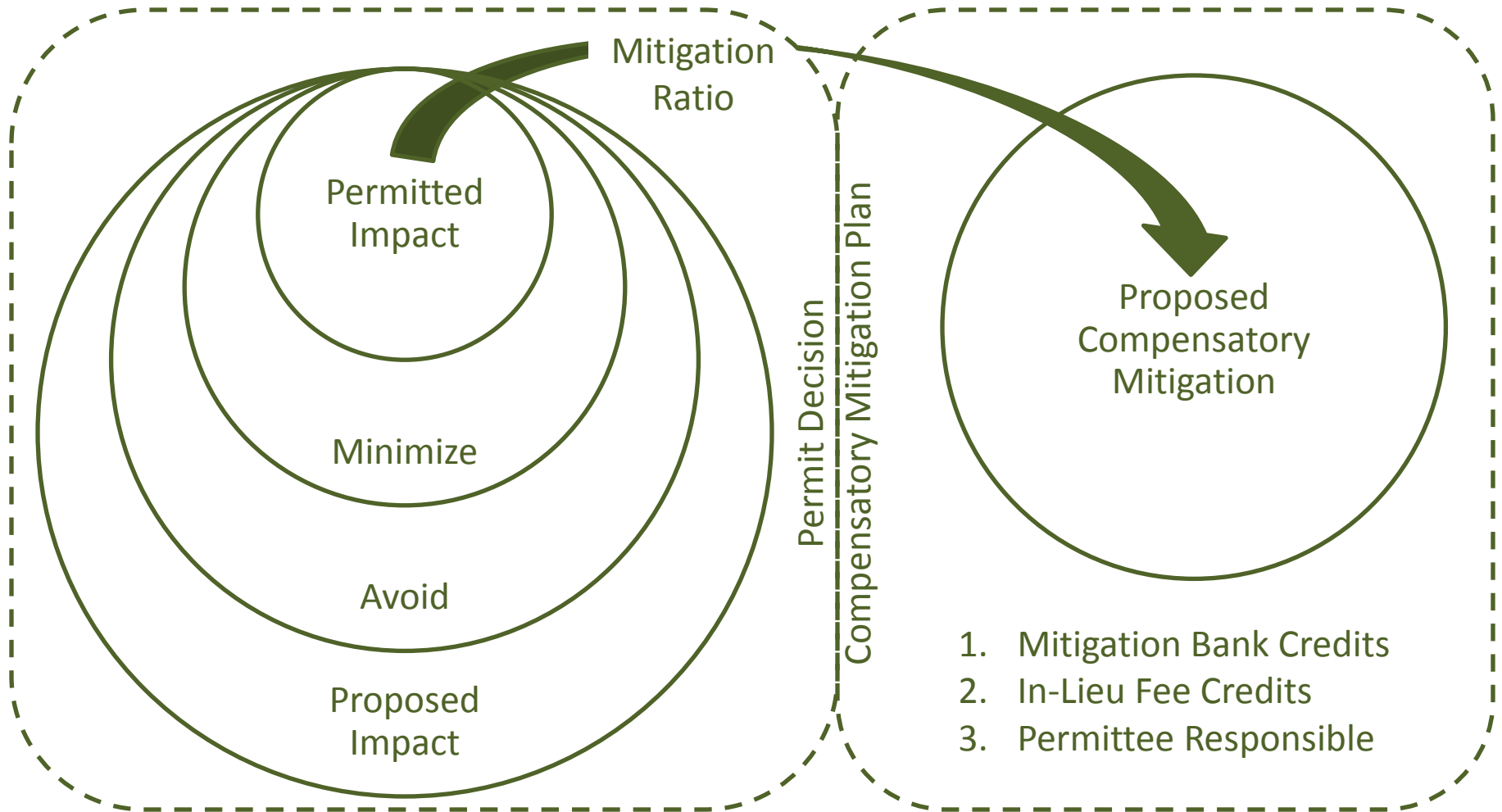
- *Compensatory mitigation* means the restoration, establishment, enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

# Current Mitigation Options

1. Permittee-responsible mitigation (PRM) (“in-place” mitigation)
2. Use of an approved mitigation bank



# Mitigation Process





# What is “in-lieu fee” mitigation?

- Permittee provides funds to an in-lieu-fee (ILF) sponsor (must be a public agency or non-profit natural resource organization).
- Typically sponsor collects funds from multiple permittees and pools the financial resources.
- Sponsor builds and maintains a larger mitigation project than permittee-responsible mitigation projects.
- **MUST FOLLOW 2008 Federal Mitigation Rule**

# Why does Indiana need an ILF program?

- The 2008 federal mitigation rule recognizes that **ILF programs are an environmentally preferable** option over PRM based on several factors.
- ILF program projects **target larger, more ecologically valuable parcels** prioritized on a landscape or watershed scale.
- ILF programs provide **rigorous scientific and technical analysis and financial assurances** which translates to reduction of project success uncertainty.



# Indiana's ILF Program Development

- **Goal:** An approved ILF program
- **Challenges:** Time-consuming and technical
  - MUST follow 2008 federal mitigation rule
- **Solution:** Consultant-led effort
  - Experience with ILF programs
  - Time and technical resources
- **Funding:** FHWA grant & INDOT funds
- **Project Team:** IDNR, IDEM, INDOT, FHWA

# ILF Program Development Process

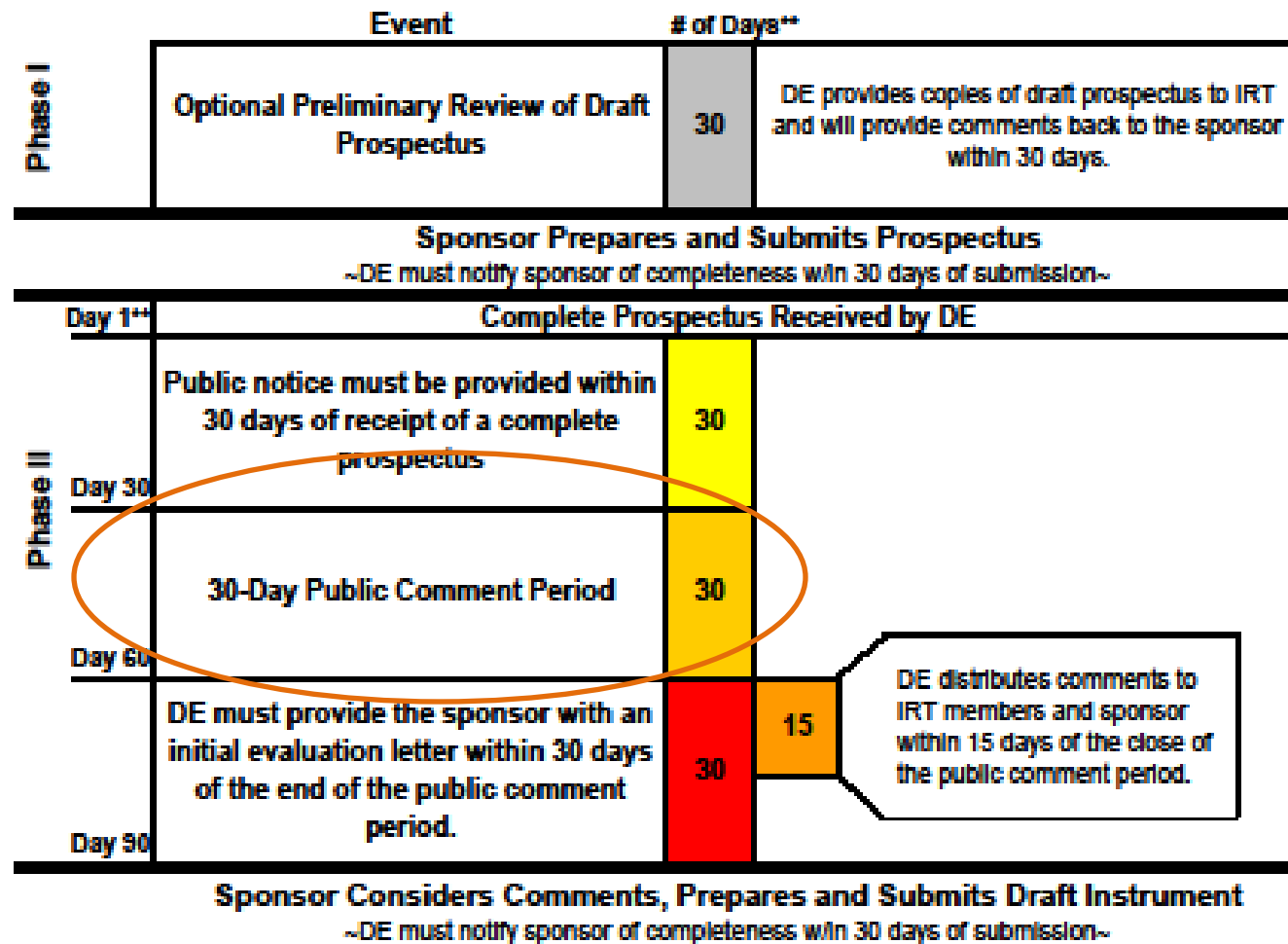
- Review and approval of program by USACE, Interagency Review Team (IRT) and state partners, with public comment
- Implementation of program by IDNR as Program Sponsor w/Indiana Natural Resources Foundation as the fiscal agent
- Consultant (Ducks Unlimited) will provide
  - Planning framework for identifying mitigation sites
  - Federally-required documentation
  - Program structure recommendations
  - Program implementation support

# Program Development Components

- **Prospectus**
  - Provides a summary of the information regarding the in-lieu fee program at a sufficient level of detail to support informed public and IRT comment
- **Compensation Planning Framework (CPF)**
  - Project selection screening process
- **Instrument**
  - Describes processes of IN SWMP
  - Legally binding document
  - Program must operate within the context of the Instrument

# ILF Program Development Process

## Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval\*



# ILF Program Development Process

Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~					
Day 1 Complete Draft Instrument Received by IRT Members					
Phase III		30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	90	Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
		DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60		
Day 90					
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~					
Day 1 Final Instrument Received by DE & IRT					
Phase IV		DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
	Day 30	Remainder of time for initiation of dispute resolution process by IRT members	15		
Day 45 INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED					

# In-Lieu Fee Program Prospectus for Indiana Stream & Wetland Mitigation Program

JUNE 25, 2014

Prepared for:



INDIANA DEPARTMENT  
OF NATURAL RESOURCES  
AND



INDIANA NATURAL  
RESOURCES FOUNDATION  
402 W. Washington St., W256  
Indianapolis, IN 46204

Prepared by:



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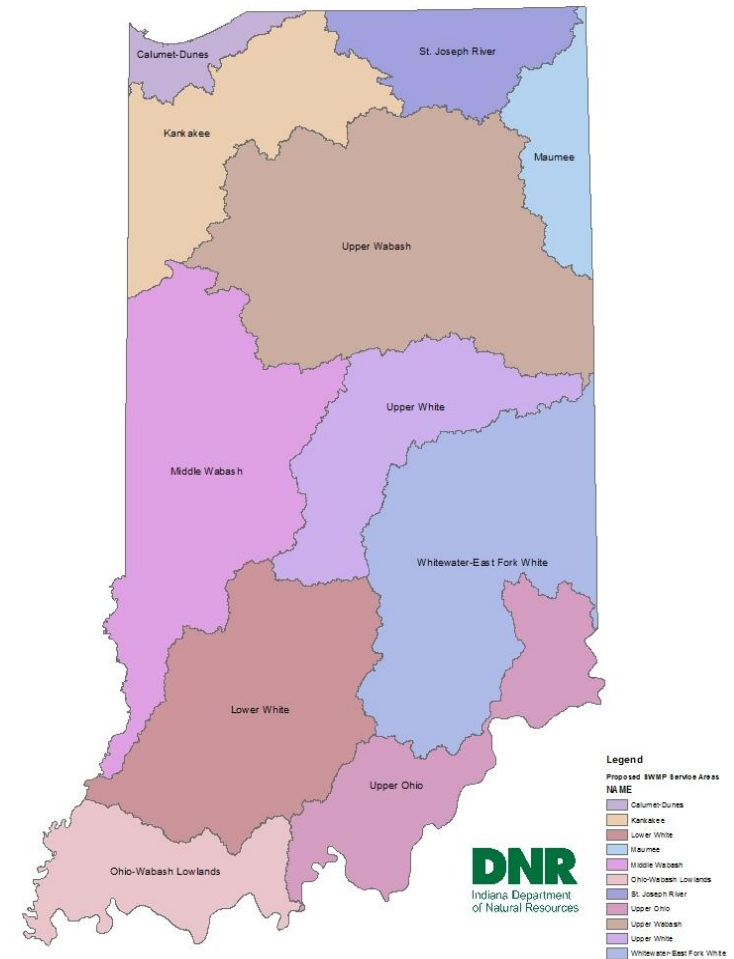


## INDIANA STREAM & WETLAND MITIGATION PROGRAM DETAILS

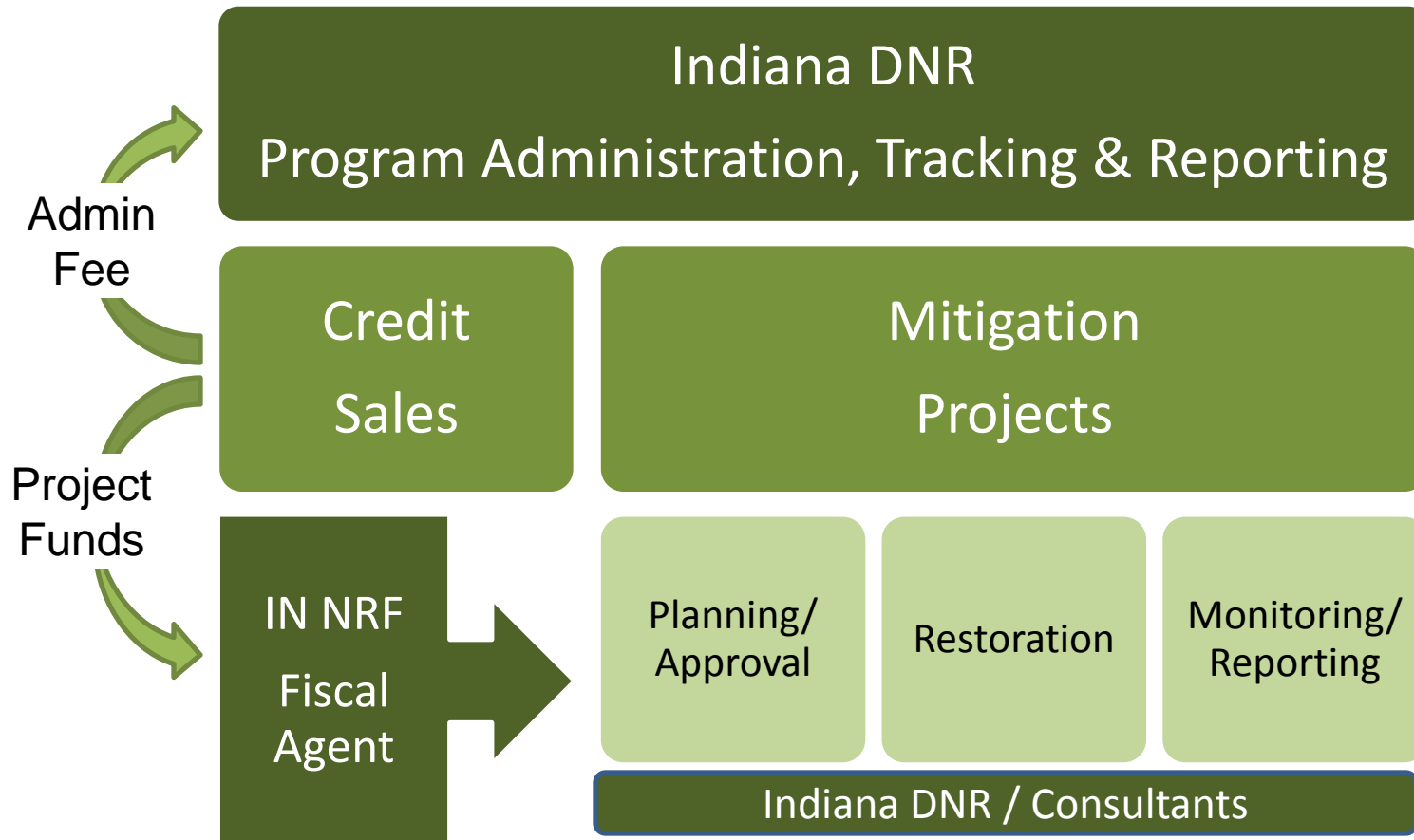


# Indiana Stream & Wetland Mitigation Program

- Reduce Public's Regulatory Burden
- Statewide Watershed-Based Service Areas
- Consolidate Mitigation
  - Increase Ecological Significance
  - Gain Efficiencies in Mgmt & Protection
  - Integrate into other Conservation Efforts



# Program Management



# Program Management

- Indiana DNR will be the Program Sponsor
- Sponsorship entails:
  - Identification of projects
  - Project planning & approval
  - Contracts for construction
  - Credit sales and tracking of credits
  - Regular reporting to the Corps
    - Formal annual reports & informal monthly updates

# Program Management

- Indiana NRF to serve as the Fiscal Agent
  - Deposits / Expenditures
  - Tracking all funds
  - Federal rule requires funds be used only for the ILF program projects (up to 15% for administrative costs are allowable)
  - May require hiring an accountant
- Fits into the Foundation's mission

# Credit Sales



# Mitigation Project Plans

- 2008 Mitigation Rule allows 3 growing seasons after credit sales for construction to begin
- Sponsor will identify potential mitigation projects → IRT review
- Develop a draft design → IRT review
- Develop a Mitigation Project Plan
  - considered amendments to the Instrument
- IRT approval of plan → construction



# Accountability

- Projects must have the same accountability as a mitigation bank
- All proposed projects are public noticed
- Submit annual program reports and project specific performance monitoring reports
- Projects should replace lost aquatic resources

# Current Status

- Submitted Final Prospectus and CPF to USACE on June 25, 2014
- Public Comment period began on July 16, 2014 and closes on August 18, 2014

## In-Lieu Fee Program Prospectus for Indiana Stream & Wetland Mitigation Program

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Prepared for:



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# Public Notice: LRL-2014-100-lcl

- Prospectus and CPF Currently on Public Notice
  - <http://www.lrl.usace.army.mil/Missions/Regulatory/PublicNotices/tabid/10590/Article/486213/lrl-2014-100.aspx>
- Submit Comments to the USACE
  - U.S. Army Corps of Engineers, Louisville District
  - ATTN: Mr. Laban Lindley
  - Indianapolis Regulatory Office
  - 8902 Otis Avenue, Suite S106B
  - Indianapolis, Indiana 46216
  - [lrl.regulatorypubliccomment@usace.army.mil](mailto:lrl.regulatorypubliccomment@usace.army.mil)

# Next Steps & Schedule

- Comments from the public and the IRT will be addressed in the Draft Instrument
- Draft Instrument submission
- Final Instrument submission



- Construction in a Floodway – Flood Control Act  
(IC 14-28-1)
- Construction on a Public Freshwater Lake – Lake Preservation Act  
(IC 14-26-2)
- Construction in a Navigable Waterway – Navigable Waterways Act  
(IC 14-29-4)

## **IDNR DIVISION OF WATER PERMITS**

# DNR ILF Rules

- The Natural Resources Commission formally adopted 312 IAC 9.5 on July 15, 2014.
- Rule establishes an option for an in-lieu fee to mitigate for adverse impacts to fish, wildlife and botanical resources for construction in a floodway, public freshwater lake or navigable waterway
  - DNR permit staff will determine appropriateness of proposed mitigation
- Gives applicants a third option for mitigation



# DNR ILF Program Policy

- Non-rule policy is under development by DNR
  - Site specificity consideration
- Being developed in parallel with the in-lieu fee program for Section 404 and 401 permits
  - Funds will be kept separate
- Will include credit pricing and fee structure
  - Will account for full costs of mitigation project

# Any Questions?

Carl Wodrich

Director of Ecological Services

Indiana Department of Natural Resources

Division of Land Acquisition

317-232-1291

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